



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RANDY M. STONE,

Petitioner,

vs.

JACK PALMER, *et al.*,

Respondents.

3:08-cv-0172-BES-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, Randy M. Stone, a prisoner at Nevada's Lovelock Correctional Center. Petitioner has paid the filing fee for this action. (Docket #6). The petition shall now be filed and served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the Court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Petitioner has requested the appointment of counsel. (Docket #1-3, #1-4). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th

1 Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801
2 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730
3 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be
4 appointed if the complexities of the case are such that denial of counsel would amount to a
5 denial of due process, and where the petitioner is a person of such limited education as to be
6 incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins*
7 *v. Bennett*, 423 F.2d 948 (8th Cir. 1970).

8 The petition on file in this action is sufficiently clear in presenting the issues that
9 petitioner wishes to bring. Although petitioner states that he is "mentally challenged," he does
10 not explain the nature of his purported mental disability, nor does he provide the Court with
11 any proof that he has a mental disability (such as medical records or the like). It does not
12 appear that counsel is justified in this instance. The motion shall be denied, without prejudice.

13 Finally, petitioner seeks an evidentiary hearing. (Docket #1-5). Petitioner has failed to
14 meet the burden required of him by 28 U.S.C. § 2254(e). Moreover, a request for an
15 evidentiary hearing is premature at this juncture. The motion will be denied.

16 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE and SERVE** the petition
17 (Docket #1-1 and #1-2) upon the respondents by certified mail.

18 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry
19 of this order within which to answer, or otherwise respond to, the petition. In their answer or
20 other response, respondents shall address any claims presented by petitioner in his petition
21 as well as any claims presented by petitioner in any Statement of Additional Claims.
22 Respondents shall raise all potential affirmative defenses in the initial responsive pleading,
23 including lack of exhaustion and procedural default. **Successive motions to dismiss will not**
24 **be entertained.** If an answer is filed, respondents shall comply with the requirements of Rule
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1 5 of the Rules Governing Proceedings in the United States District Courts under 28 U.S.C.
2 §2254.

3 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney
4 General of the State of Nevada a copy of every pleading, motion, or other document he
5 submits for consideration by the Court. Petitioner shall include with the original paper
6 submitted for filing a certificate stating the date that a true and correct copy of the document
7 was mailed to the Attorney General. The Court may disregard any paper that does not include
8 a certificate of service. After respondents appear in this action, petitioner shall make such
9 service upon the particular Deputy Attorney General assigned to the case.

10 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of counsel
11 (Docket #1-3, #1-4) is **DENIED** without prejudice.

12 **IT IS FURTHER ORDERED** that petitioner's motion for an evidentiary hearing (Docket
13 #1-5) is **DENIED**.

14 DATED this 6th day of May, 2008.

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19 UNITED STATES DISTRICT JUDGE
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